



(Approved April 20, 2023)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, March 16, 2023
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Christopher Burton, Acting Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Loressa Hon, Chief of Administration
Toren Lewis, Commission Counsel
Lindsey Nakano, Senior FPPC Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:03 a.m.

2. Closed Session.

The Commission adjourned for closed session at 10:03 a.m. and reconvened at 10:35 a.m.

3. Approval of Commission Minutes.

MOTION: To approve the February 2023 meeting minutes. Moved by Commissioner Baker; seconded by Chair Miadich. The motion passed 4-0.

4-5. Consent Calendar.

Commissioner Baker stated she would like to pull both items from the consent calendar for further discussion.

Commissioner Baker stated she had two areas of interest for item four, starting with the streamline matter that is presented as part of the same case presented in the stipulation. Christopher Burton, Acting Chief of Enforcement, stated there is a streamline matter that involves the same candidate but different committees and since the violations happened at the same time, they aren't looked at as prior history.

Commissioner Baker then discussed the comparable that is cited in the stipulation but was surprised by how little information there is surrounding this type of violation. Mr. Burton stated he did not want to speculate but believes the regulation being young may be why there are very few cases where this violation is seen.

Commissioner Baker asked how Enforcement Staff concluded that there is no evidence of attempt to conceal when the respondent is a multi-year officer. Mr. Burton discussed how Staff may look at attempt to conceal in each violation and how they may reach that conclusion.

Commissioner Wood thanked Staff for their work on the public harm piece of the stipulation. She further asked if committees have a duty to the donor and whether the rule protects donor intent. Chair Miadich discussed that statement further to state there may be two pieces to the statement with the first being the intent behind the regulation and second, what could the Commission be doing to protect donor intent. Mr. Burton stated he did look at the intent behind the regulation and essentially found the regulation was passed to plug a hole that existed that allowed ballot measure committees to circumvent contribution limits, as well as, one campaign bank account rules.

Chair Miadich stated this stipulation is a circumstance with one comparable and the comparable was very clear, almost black and white, while this stipulation did have parts of the advertisement that were a violation but parts that did not violate the law. Mr. Burton agreed with that understanding but discussed that because it was the same type of violation for the parts that did break the law, it was included as a comparable.

MOTION: To approve item 4. Moved by Chair Miadich; seconded by Commissioner Wood. The motion passed 4-0.

Mr. Burton stated there was a typo on page five, line eight of the stipulation for item 5.

Commissioner Baker asked about the language on page 11 of the stipulation that discusses the penalty amount. Mr. Burton cited the law that allows Staff to penalize three times the cost of an advertisement and discussed the direction from the Commission that cases with a high intent to conceal should be

charged near the maximum penalty. Mr. Burton then stated the intent to conceal was not found in this case and that is why the penalty amount is as presented.

Commissioner Wilson asked what the penalty would have been if intent to conceal was found. Mr. Burton stated it would be three times the amount of the advertisement.

Commissioner Wood discussed intent to conceal information and intent to conceal at specific times in the election that could sway the public in a specific way and wondered if Staff had a way to differentiate between the types of intent to conceal. Mr. Burton stated the law does provide those tools.

Commissioner Baker clarified that the statute does not require an intent to conceal to fine the highest penalty amount. Mr. Burton agreed with that statement and discussed the previous direction from the Commission was to include the intent to conceal because the fine amount is substantially higher than the \$5,000 max penalty for other fines. Galena West, Executive Director, stated the regulation was amended in 2018 that the three times penalty be presented when there is intent.

MOTION: To approve item 5. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 4-0.

6. Prenotice Discussion of Proposed Amendments to Regulation 18531; Return of Excessive Contributions.

Toren Lewis, Commission Counsel, presented the proposed amendments to regulation 18531.

Commissioner Baker discussed remit envelopes and whether this type of contribution is accounted for in the regulation. Mr. Lewis stated there may be a number of different ways to structure the regulation and the intent is to capture all the ways an over the limit contribution may be received.

Commissioner Baker asked about the language that excess can be made to a subsequent election and what does a subsequent election mean in this case. Mr. Lewis discussed the use of subsequent election and another election, which is also used in the regulation, and making a choice between the two to be consistent.

Chair Miadich recommended picking one term to use and suggested the term used in the statute.

Commissioner Baker asked if two spouses sign a check and it's equivalent of twice the maximum, what would happen in this situation. Mr. Lewis stated his belief that committees would split contributions between the primary and the general.

Commissioner Wood discussed the differences between the statute and the regulation, specifically transferring money to another committee. Mr. Lewis stated it is dependent on each case. Dave Bainbridge, General Counsel, stated candidates have to open new committees each time they run. Mr. Bainbridge discussed the decision point for the Commission to consider which is the amount of time to return the excess contributions. Mr. Lewis clarified the current regulation allows for return of excess contributions within 14 days if there is not actual knowledge of the excessive contribution and the proposed changes are trying to clarify what not having actual knowledge might mean.

Chair Miadich discussed the practices of automatically moving excessive contributions from a primary to the general and asked if there was any way for the donor to be notified of this practice. Mr. Lewis stated he doesn't know of any rule requiring that.

Commissioner Baker asked if this regulation is appropriate for an interested persons meeting. Mr. Bainbridge stated it's appropriate but is unclear if there would be participation since there have been no comment letters at this time.

7. Legislative Update.

Lindsey Nakano, Senior Legislative Counsel, updated the Commission on an oversight hearing that discussed lobbying audit completion by the Franchise Tax Board and gave an update on introduced bills that would affect the agency. Ms. Nakano then asked the Commission to formally support the four Commission priority bills that have been introduced.

Commissioner Baker asked how AB 868 is different from the iteration of the bill from last year's session. Ms. Nakano stated last year it was the platforms who were required to submit the advertisement information and this year it is the committee's obligation.

Commissioner Baker asked if SB 888 is the clean-up bill that has been previously discussed. Ms. Nakano stated it was the clean-up bill.

Commissioner Wilson asked if Ms. Nakano would update the Committee or Commission if there are significant changes to any bill that the Commission sponsors. Ms. Nakano stated she would do that.

Commissioner Baker asked that the Commission vote on each bill separately since she intends to abstain from voting on AB 868.

MOTION: To support AB 868. Moved by Chair Miadich; seconded by Commissioner Wood. The motion passed 3-0 with Commission Baker abstaining.

MOTION: To support SB 29. Moved by Chair Miadich; seconded by Commissioner Baker. The motion passed 4-0.

MOTION: To support SB 678. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 4-0.

MOTION: To support SB 888. Moved by Chair Miadich; seconded by Commissioner Baker. The motion passed 4-0.

Chair Miadich asked if there were any stakeholders who have supported SB 681. Ms. Nakano stated California Clean Money has shown support.

Commissioner Baker asked about AB 37, specifically if there is requirement of reimbursement after the candidate is no longer in office or feels as though the security issue has passed. Ms. Nakano stated there are no explicit provisions for reimbursement. Commissioner Baker asked what the rules are for campaign committees who use campaign funds to purchase items, like a refrigerator, and what the reimbursement rules are when the committee is closed. Chair Miadich reminded Ms. Nakano that the Commission had asked for information from the author's office and whether that information was received. Ms. Nakano stated it had not yet been received.

Chair Miadich asked if foreign principal is defined anywhere. Ms. Nakano stated there is a definition already available.

8. ADA Compliance.

Loressa Hon, Chief of Administration, gave an overview of the current ADA compliance procedure and the costs associated with having ADA compliant documents and website.

Chair Miadich clarified the total staff cost line in the report. Ms. Hon stated that line item should be total cost and not total staff cost.

Chair Miadich asked if there was a mechanism to get additional resources to offset this cost. Ms. Hon stated the department could submit a budget change proposal to adjust overall resources that could include the additional resources needed to meet ADA compliance.

Commissioner Wilson suggested all state agencies could create a uniform budget request to meet this requirement based on each department's needs.

Chair Miadich asked if there is a mechanism that captures bills that effect all agencies like this bill did.

Ms. Hon stated she is not aware of a system like that. Commissioner Baker added that the Department of Finance does score bills in appropriations which is the closest thing to what the Chair is asking about.

9. Fiscal Year 2022/2023 Second Quarter Expenditure Report

Ms. Hon presented the 2022/2023 Second Quarter Expenditure Report.

The Commission adjourned for a break at 12:40 p.m. and reconvened at 12:46 p.m.

Chair Miadich asked if Staff anticipates the new website purchase that is allocated in the budget going through this fiscal year. Ms. Hon stated yes, she is just waiting for the Department of Technology approval. Chair Miadich asked what happens if the approval does not come prior to June 30. Ms. Hon stated that allocation does not carry over so by April, the Commission will move on to purchasing equipment and furniture to spend the allocations. In order to purchase the new software in the next fiscal year, the allocation would need to come out of next year's budget. Chair Miadich asked if there was anything in next year's budget that would hinder moving this allocation to next year. Ms. Hon stated she does not believe it would be a problem.

10. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

11. Commissioner Comments and Proposed Future Agenda Items.

Chair Miadich discussed a legal report on the potential gaps to protect donor intent and any perspective on constitutional issues that may be related. Chair Miadich also wanted a report back by May 2023 of potential locations to hold traveling Commission meetings.

Commissioner Wood would like to hear more information on intent to conceal in an online ad context.

Commissioner Baker asked for an informational update on candidate-controlled ballot measure committees and what candidates can and cannot do.

MOTION: To Adjourn the meeting. Moved by Commissioner Wilson; seconded by Commissioner Baker. The motion passed 4-0.

The meeting adjourned at 1:15 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved April 10, 2023

Richard C. Miadich, Chair
Fair Political Practices Commission